19 41

Department of

OFFICE Board of Rev

STATION Madras

Mis: No. 2321

.4937/41

Dated 20—X—41

Issue today

11.45

DESPATCHED
20 OCT

Pages in the file

(SUBJECT.)

Suit - Pauper - (S. Kamara) - Puttur Dis
Munsif's Court - O.S. No. 1938-122- Court
recovery - Film of in fresh suit
Negatived

Ref.B4-8301-40. South Kanara Collector's Office,
Mangalore, dated 10 - 10 - 1941.

From

M. V. Subrahmanyan Esq., I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Irrigation,
Madras.

Sir,

Stamps - Stamp duty - Dt.Munsif's court,Puttur-O.S. 122-38 - Court fee awarded to Government -recovery-filing of a fresh suit -sanction - requested.

One Laxmi Amma, widow of Keshava Bhatta of Karadka village, Kasargod Taluk, sued in forma-pauperis defendants Shivaraya Bhatta, Kittu alias Krishna Bhatta and 12 others in O.S. 122-38 on the file of the Dt. Munsif of Puttur for recovery from the assets of her joint family to which she and all the defendants belonged, her past and future maintenance at the rate of Rs. 350/- per annum. The Dt. Munsif, Puttur held that the court had no jurisdiction to entertain the suit and ordered the return of the plaint to the plaintiff. He also ordered and decreed that the plaint shall be represented before the proper court within one month from the date of return and in default the plaintiff should pay to the Government a sum of Rs.49-15-0 being the court fee due to them.

p33(N) p33(N) p34(N)

2. The plaintiff failed to represent the plaint before the proper court. but entered into a registered agreement with the defendants (Shivaraya Bhatta, Manager of the family and Kittu alias Krishna Bhatta) in the suit, which provides for regular payment of a sum of Rs. 125/- per annum to her on the day of Vishu every year, towards her maintenance. On the date of the registration of the agreement she had received

p11(V) p23(V)

from the parties the amount of her past maintenance and passed a receipt for it. According to the terms of the agreement the plaintiff is entitled to recover arrears of the maintenance amount (if it falls into arrears) with interest at 6¼% personally from the defendants and as a charge upon the joint family properties. (R)

Since the plaintiff failed to represent the plaint before a competent court she is liable to pay to Government the court fee of Rs. 49-15-0 as decreed in O.S. 122/38 on the file of the Dt. Munsif's court, Puttur Attempts to collect it peacefully failed. The decree was, therefore, got transferred to the Dt. Munsif's court, Kasargod within whose jurisdiction the parties live and the properties concerned lie. As the Judicial Committee of the Privy Council has in a case reported in 52 Indian Appeals page 262 held that the right to maintenance cannot be attached or sold and that the proper mode of execution by proceeding against such rights of maintenance is by getting a Receiver appointed for collection of such maintenance amount an execution petition was filed in the Dt. Munsif's court, Kasargod in R.E.P. 1195-40 for the appointment of a Receiver to collect the maintenance amount. pp55-59 (N)

One Sri K. Kamalaksha Rao was appointed Receiver by the Court. He sent a demand notice to Shivaraya Bhatta and Kittu alias Krishna Bhatta to pay up the maintenance due to Laxmi Amma by 15-4-41, but the parties refused it and have not paid the amount till now. p69 (N)

There is no other way of collecting the court dues and the Receiver will, therefore, have to file a suit against the three persons, viz., Laxmi Amma, Shivaraya Bhatta and Kittu alias Krishna Bhatta for the recovery of the amount The Receiver is apparently not prepared to spend from his pocket, for instituting the suit. He has, therefore, to be financed by Government. The suit will have to be for Rs. 125/- with interest. In the above circumstances the pp91-92 (N)

filing of a suit is inevitable. I have, therefore, got a draft plaint prepared by the Pleader for Government, Kasargod, and am enclosing a copy of it after scrutiny by the Government Pleader. I request that the plaint may be approved and that sanction may be accorded for the filing of the suit in the Kasargod Dt. Munsif's court.

The original agreement deed referred to in para 2 above secured from the parties and the connected papers of enquiry (pages 11-116 c.f.) are enclosed for perusal and return.

The initial expenses for instituting the suit will approximately be as under exclusive of Pleader's fee and stationery and scriptory charges.

	Rs. a. p.
Court fee on plaint	14-9-0
Stamp for vakalat	1-0-0
Notice batta to defendant.	1-4-0
	16-13-0

For Collector.

11.X.41

DRAFT FOR APPROVAL. (E.M.G)

	Date.	Initials.
When received for fair copying ..	20/+	✓
When copied ..	do 20/+	
When examined ..		
When signed ..		✓/+x
When despatched.		✓/Pl

SUBJECT :— Suits. Pauper. (S. Kanara) - Puttur Distri Munsif's Court. O.S.No. 1938-122. Court Fee Recovery - Filing of a Fresh Suit - Negatived.

READ AGAIN _____, dated _____ 19____

" " _____ " _____ 19____

READ *ALSO* :—

pp1-24 No. _____ From the Coll^r of S. Kanara By No. 8301-40, dated 10-x-19 41 &

" _____ " _____ " _____ " _____ 19____

" _____ " _____ " _____ " _____ 19____

~~Order~~ / Resolution ~~Mst.~~ / Ms. No. 2849, dated 20th October 1941.

The Board observes that in the present case the total sum available for being paid to the receiver is Rs:125. This gives a rate of about Rs:10-8-0 a month. It is unlikely that a sum smaller than this will be permitted by Court as sufficient for the woman's subsistence. In the circumstances the Board considers it not worthwhile to file a Suit in the Kasaragod Dist Munsif's Court for the recovery of the amount for close to a year.

17/x/41

To the Collector of S. Kanara (with Encls)

by R.P

17/x

17.x.41

Issued on 20/10 without fair copy

Encls returning

20/x/41

17/10

Suits. Pauper. (S. Kanara). Puttur Dist Munsif's Court - O.S.No. 122/1938. Court Fee. Recovery. Filing of a fresh Suit. Sanction. Requested.

L. 4937/41

The Records (V) & (N) pp1-3 cf. agreement (R)

Ref. B4.8301-40 & 10.X.41 from the Coll[r] of S. Kanara.

To Joint Secy

The plaintiff instituted the suit

pp33-34 (N)

O.S.No. 122/39 of Puttur Dist Munsif's Court in forma pauperis against the defendants for recovery of her maintenance from the joint family estate as ejmen and Manager therefor. The Dt

p34 (N)

Munsif found that the Court had no jurisdiction to entertain the suit and ordered the return of the plaint to the plaintiff for presentation to the proper Court within one month from 28-2-40 and in default to pay the Govt Rs. 49-15-0 being the Court fee due on the plaint. The plaintiff instead

p 11 (V)

of re-presenting the plaint before the proper Court entered into an agreement with defendants

(R)

1 and 2 under a registered deed. According to the terms of the agreement the plaintiff got a

p23 (V)

maintenance of Rs. 125/- per annum. She has also received arrears of maintenance but failed to pay Govt dues. The judgment debtor has no other properties except her right to receive the maintenan

pp41-42 (N)

Execution proceedings were therefore taken to attach the annual maintenance by getting the decree transferred to the D.M. Court, Kasaragod. As the

right of maintenance ~~[illegible]~~ Cannot be attached
the decree has got to be executed by getting a
receiver appointed for Collection of Such
maintenance. In the E.P. filed it was also
prayed that a receiver may be appointed to
Collect the maintenance Sum due to the J. Debtor
According to the registered deed of Agreement.
A receiver was accordingly appointed by the Court to Collect
the maintenance allowance due. Inspite of
demands the respondents refused to pay and
the only way by which the amount Can be Collected
is for the Receiver to
~~[illegible]~~ to file a Suit against them, But the
receiver is not prepared to advance funds to
meet the expenses for the proposed Suit.

Perusal is Solicited of the letter from
the pleader doing Govt work, Kasargod. It is
Seen that the defendants Cannot escape
from the liability and ~~[illegible]~~ the Govt have
a good Chance of Succeeding in the proposed
Suit. The initial expenses for ~~the~~ filing the
Suit amount to Rs: 16/13/- excluding pleader's
fee and Scriptory Charges. The draft plaint
is at pp ~~[illegible]~~ 97-102 of (N). The Board may approve
the plaint and Sanction the filing of a Suit
in the D.M.C. Kasaragod by the Receiver.

pp 55 57 (N)

p 69 (N)

p 83 (N)

p 91 (N)

p 92 (N)

p 95 (N)

A

16/7/41

A The stamp duty involved in the proposed suit is only Rs 49-15-0. This amount is now proposed to be remitted

by asking the Receiver appointed by court to receive one year's maintenance of Rs 125/- due to the J.D. According to S.O. 38 Rule 10 3
10.8 of the Stamp Standing Orders & Rules are not strictly to apply to civil courts for the execution of the decree to recover the Stamp duty in pauper suits in cases in which the collection of the amount cannot be effected without depriving the parties liable of the actual means of subsistence. The records submitted by the Collr does not show whether this aspect of the case was considered at any stage. But as the matter has reached a stage from which it may not be desirable for the Govt to withdraw, the institution of the suit by the Receiver may be sanctioned if it is considered that a reference to the Collr regarding 'X' above is not necessary.

It does appear strange that a party should be receiving Rs 125 per year & yet fail to pay any sum to Govt due as Stamp duty to Govt should normally. Seek to get the sum due, but there are certain circumstances in this case for consideration.

(a) The Pt Munsiff in returning the plaint for presentation before the

Sd
16/10

proper court might have left the question of stamp duty open, to be decided by the concerned court. An order re: payment of stamp duty at that stage was technically correct, but not one that was strictly necessary.

(b) Maintenance sums are exempt from attachment. (60 CPC) This is the gist of Rule 108 in page 338 of the Stamp Manual. In this case, because such sum cannot be attached, the same result is sought to be achieved by a devious method, viz. by appointing a receiver to collect the maintenance, pay the party a sum sufficient for her subsistence & to credit the balance to stamp duty. This procedure is authorised by a Privy council decision 52 Indian Appeals, page 263-265. In that case the sum involved was a large one; & all that the Privy council said was that a receiver should be appointed to realise the rents & profits of the property, paying out of the same a sufficient & adequate sum for the maintenance of the J.D & his family & applying the balance if any to the liquidation of the judgment creditor's debt This they called equitable or indirect execution. In the present case the total sum available for ~~the~~ being paid to

Vth No 103

the receiver is Rs 125 this gives a rate of about Rs 10-8-0 a month. It is unlikely that a sum smaller than this will be permitted by court as sufficient for the woman's subsistence. In any case the balance available will be ~~the other party~~ I also notice that there is a difference of opinion between the Ajt Magistrate, the pleaders doing Govt work, & Sarang as to whether the receiver should file a suit for Rs 125 being the whole maintenance due or only for Rs 6-9 being the C.P. due & that there is the risk of ~~Govt~~ the court not praying costs. If so Govt will lose the money advanced for the suit

I am therefore, in answer to the views that the matter should be dropped.

Mcp
16.X.41

walking a few with MK Nambiar

Myself. The Court informed the plaintiff so she got no satisfaction from it. Why should we collect 49/- in such a technical point. For the correspondence we would think Govt is given wrong advice: and from the

time the unfortunate GI (Kasaragod) who gets no retainer, has spent on it.

(If Sri Subramaniam was any Govt servant he would realise that time is better spent on more important matters: it is probable that a civil court will hold 1/8 a minimum sentence and the Govt. will not [illegible] of an imputation of persecution by legal process)

Matter should be dropped.

17/X

To Joint Secy

Draft Submitted.

17/X/41

17/X/41

17.X.41

17 OCT 1941

B.P. No. Mis: 2849
Dated 20-x-1941

Single Number
~~Two Members~~
~~Full Board~~

Assistant Secretary

•A. A.D.S & L.R. | L.R. | Irrign. | Sop. Rev. | J.S. | Secy.

M 3 | M 2 | M 1

Open file seen by ✓ ✓

Final draft seen by ✓

Now circulated to

Initials

~~Secretary~~
Joint Secretary. 28/10/41

Passed for record

A.S. (L.R.)
A.S. (Irrign)
A.S. (Sep.Rev.)
A.D.S.& L.R.
I.A.

Note:- Entries not required to be scored out.